IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 30960 of 2006(I)

PETITIONER:

T.PRASANNAKUMAR,
NIRMALA BHAVAN, POTHENCODE,
THIRUVANANTHAPURAM-DIST.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO
   GOVERNMENT, FOOD, CIVIL SUPPLIES AND CONSUMER
   AFFAIRS DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DISTRICT COLLECTOR,**
   THIRUVANANTHAPURAM.

3. **THE DISTRICT SUPPLY OFFICER,**
   THIRUVANANTHAPURAM.

4. **H.GEETHA,**
   POOVANATHUM VILAKOM, AZHOOR,
   PERUMUZHI-PO, CHIRAYINKEEZHU TALUK,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.BENJAMIN PAUL
ADV. SRI.N.NANDAKUMARA MENON
SRI.P.K.MANOJKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE PROCEEDINGS NO.CSI-1407/2003 DATED 21-6-2004 ISSUED BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM.

EXT.P2: COPY OF THE APPEAL FILED BY THE 4TH RESPONDENT BEFORE THE COMMISSIONER OF CIVIL SUPPLIES, THIRUVANANTHAPURAM DATED 30.7.2004.

EXT.P3: COPY OF THE CIRCULAR NO.10/83 ISSUED BY THE DIRECTOR OF CIVIL SUPPLIES.

EXT.P4: COPY OF THE ORDER NO.(C.S)A8-20003/04 DATED 4.5.2005 ISSUED BY THE COMMISSIONER OF CIVIL SUPPLIES.

EXT.P5: COPY OF THE MEMORANDUM OF REVISION FILED BY THE 4TH RESPONDENT BEFORE THE GOVERNMENT DATED 30-7-2005.

EXT.P6: COPY OF THE NOTICE NO.7890/B1/05F,CS &CAD DATED 15.5.2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P7: COPY OF THE ORDER NO.G.O(Rt.) NO.398/06/F,CS & CAD DATED 8.11.2006.

EXT.P8: COPY OF THE FORMAT CONDITIONS FOR SUBMITTING APPLICATION.

EXT.P9: COPY OF THE APPLICATION GIVEN BY THE PETITIONER DATED 25.6.2003.

EXT.P10: COPY OF THE MAHAZAR PREPARED AT THE TIME OF OPENING APPLICATION.

EXT.P11: COPY OF THE APPLICATION SUBMITTED BY THE 4TH RESPONDENT.

RESPONDENTS EXHIBITS:

EXT.R4(a): COPY OF THE NOTICE NO.CSI/407/2003 DATED 17.2.2004 ISSUED BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM TO THE 4TH RESPONDENT.

EXT.R4(b): COPY OF THE NOTICE NO.CSI/407/2003 DATED 1.6.2004 ISSUED BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM TO THE 4TH RESPONDENT.

TRUE COPY

P.A.TO JUDGE

ANTONY DOMINIC,J

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W.P.(C)No.30960 of 2006

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Dated this the 24th day of September 2007

JUDGMENT

This writ petition is filed praying for quashing Ext.P7 and for a declaration that the first respondent ought not have entertained the application of the 4th respondent. Petitioner is also seeking consequential reliefs.

2. The controversy in this writ petition is in relation to the appointment of an authorised whole sale distributor(AWD) in Thiruvananthapuram Taluk. Ext.P8 is an advertisement issued by the second respondent inviting application for the appointment of an AWD. One of the requirements was that solvency certificate in original should be produced along with application. It was also specified that the applications which were not accompanied with the prescribed documents will not be considered.

3. In response to Ext.P8, applications were received before 25.6.2003, the last date fixed in the advertisement.

Exts.P9 and P11 are the applications submitted by the petitioner and the 4th respondent. From Ext.P10 -Mahazar prepared at the time when the applications were opened in the presence of the applicants, it is revealed that the 4th respondent had produced only a stamped application and none of the documents prescribed in the advertisement were produced.

4. The applicants were called for an interview on 16.6.2004 by the second respondent where seven of them appeared. It is submitted that the 4th respondent produced a solvency certificate on 16.6.2004. On conclusion process of selection, Ext.P1 order was issued by the second respondent granting licence to the petitioner as AWD. Aggrieved by the appointment of the petitioner, the 4th respondent filed Ext.P2 appeal before the Commissioner of Civil Supplies and the Appellate Authority rejected the appeal by Ext.P4. Later the 4th respondent filed Ext.P5 revision before the first respondent and by Ext.P7, the revision was allowed holding that the 4th respondent was the most eligible candidate since the solvency certificate offered by her for Rs.12,81,375 was the maximum. It is challenging Ext.P7 and for other reliefs that this writ petition is filed.

5. The 4th respondent would submit that in response to Ext.P8 advertisement, she had submitted an application. It is stated that although she had applied for a solvency certificate there was some delay and hence the solvency certificate could not be submitted along with the application and that all documents except the solvency certificate were produced by her on 4.3.2004 and on obtaining the solvency certificate the same was produced on 16.6.2004. She would also contend that when she tendered solvency certificate before the District Collector on 16.6.2004 that was refused to be accepted and therefore she had to fax the document to his address. It is further contended that requirement of solvency certificate is not a part of the rules and therefore even if solvency certificate was not produced that could not have resulted in the rejection of her application. In this connection, the counsel made a reference to the judgment of a Division Bench of this Court in **Varkey v. State of Kerala (1984 KLT 567).**

6. The learned Government Pleader on the other hand would submit although production of solvency certificate was one of the conditions in the advertisement the 4th respondent had not produced the solvency certificate along with the application.

It is also stated that since the amount offered by the 4th respondent was the maximum, they have accepted the solvency certificate and hence the revision was allowed.

7. I have considered the contentions of both sides. It is the admitted position that Ext.P8 advertisement inviting applications required production of solvency certificate and it also provided that failure to produce solvency certificate would result in rejection of the application. The application form (Exts.P9 and P11), though not statutory, also required the applicants to produce solvency certificate obtained from the Tahsildar, vide clause 6 thereof. In spite of these mandatory prescriptions, it is the admitted fact that before 25.6.2003, the last date for submission of the application, the 4th respondent had not produced the solvency certificate.

8. Even on the first date of personal hearing fixed on 5.3.2004 she did not make it available. Even according to the 4th respondent only on 16.6.2004 she made available the solvency certificate. It is the petitioner's specific contention that when the application forms received in response to Ext.P8 were opened on 25.6.2003 the 4th respondent was also present. The documents that were produced by all the applicants have been

recorded in Ext.P10 Mahazar prepared on that occasion. He would also content that the 4th respondent was fully aware of the solvency certificate offered by the petitioner and therefore she had that advantage when she offered her solvency certificate on 16.6.2004. On this basis it is submitted that prejudice has been caused to the petitioner.

9. Thus it is a case where the mandatory conditions of the notification have not been complied with by the 4th respondent. If that be so, the second respondent was justified in treating the 4th respondent ineligible for granting licence as AWD. The Appellate order also has to be upheld for the same reason. In so far as Ext.P7 order in revision is concerned, except that the highest amount was offered by the 4th respondent, there is no another reason stated in Ext.P7. Since solvency was not produced as provided in Ext.P8 advertisement, what she produced subsequently could not have been accepted. For that reason alone Ext.P7 cannot be sustained.

10. Coming to the Division Bench judgment reported in 1984 KLT 567, from Para 3 of the judgment it is noticed that the application in that case did not require the applicant to produce solvency certificate unlike in Exts.P9. It is also the

found in that case that by the subsequent production of the solvency certificate no prejudice was caused. In this case it is the specific contention of the petitioner that at the time when the 4th respondent produced solvency certificate she knew the amount offered by the petitioner. Therefore, at the time when she offered solvency certificate she certainly had that advantage. If that be so, prejudice been caused.

11. For these two reasons I find that the Division Bench judgment relied on by the counsel do not apply to the facts of the case.

In the result, Ext.P7 will stand quashed and the writ petition is allowed.

ANTONY DOMINIC, JUDGE

dvs